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April 13, 1998 **RECEIVED**

APR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Amendment of
Section 73.202(b) of the Commission's Rules
Table of FM Channel Allotments
Radio Station WPEZ(FM)
Macon, Georgia
U. S. Broadcasting Limited Partnership
(MM Docket No. 98-18, RM-9204)

Dear Mr. Salas:

Submitted herewith for filing, on behalf of our client, U. S. Broadcasting Limited Partnership, licensee of Radio Station WPEZ(FM), Macon, Georgia, are an original and four copies of its Comments in support of the Commission's proposal to reallocate FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and to modify WPEZ(FM)'s license to specify operations on Channel 300C1 in Hampton, Georgia, following the proposed rulemaking. These proposals by the Commission were set forth in the Notice of Proposed Rule Making, _____ FCC Rcd _____, DA 98-289 (Allocations Branch, Policy and Rules Division, Mass Media Bureau, released February 20, 1998).

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By.

Irving Gastfreund

Enclosures

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

APR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment Of Section 73.202(b) of the) MM Docket No. 98-18
Commission's Rules) RM-9204
)
Table of Allotments For FM Broadcast Stations)
(Macon, Georgia, and Hampton, Georgia))

TO: Chief, Mass Media Bureau

COMMENTS OF
U.S. BROADCASTING LIMITED PARTNERSHIP

U.S. BROADCASTING LIMITED PARTNERSHIP ("USBLP"), licensee of Radio Station WPEZ(FM), Macon, Georgia, by its attorneys, pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby respectfully submits its instant Comments on the Commission's proposals for (a) modification of the Commission's Table of FM Channel Allotments (Section 73.202(b) of the Commission's Rules) to: (i) delete FM Channel 300C1 from Macon, Georgia; and (ii) add FM Channel 300C1 to Hampton, Georgia; and (b) modification of the license of Radio Station WPEZ(FM) to specify operations on FM Channel 300C1 in Hampton, Georgia, in lieu of operation on Channel 300C1 in Macon, Georgia. These proposals were contained in the Commission's Notice of Proposed Rule Making, ____ FCC Rcd ____, DA 98-289 (Allocations Branch, Policy and Rules Division, Mass Media Bureau released February 20, 1998) (hereinafter "NPRM").¹ USBLP respectfully requests expeditious adoption by the Commission's Mass Media Bureau of a Memorandum Opinion and Order amending Section 73.202(b) of the

¹ Under the NPRM herein, the deadline for the submission of comments in this proceeding is today, April 13, 1998.

Commission's Rules to implement the aforementioned proposed changes. In support whereof, it is shown as follows:

The Commission's NPRM in this proceeding was issued as a consequence of the filing with the Commission by USBLP of its Petition for Rulemaking on November 19, 1997. USBLP hereby respectfully advises the Commission, pursuant to Paragraph 7 of its NPRM herein, that it has a continuing interest in adoption by the Commission of the aforementioned proposed changes, as set forth in the NPRM in this proceeding. More specifically, pursuant to the provisions of Paragraph 2 of the Appendix to the Commission's NPRM in this proceeding, as the proponent of the changes proposed by the Allocations Branch of the Policy and Rules Division in the NPRM in this proceeding, USBLP respectfully advises the Commission that it incorporates herein by reference the entirety of its November 19, 1997 Petition for Rulemaking in this proceeding. For convenience, a copy of USBLP's November 19, 1997 Petition for Rulemaking is enclosed herewith as Exhibit 1. In addition, USBLP hereby respectfully advises the Commission that it intends to apply for a construction permit for WPEZ(FM) to operate on FM Channel 300C1 if that channel is reallocated to Hampton, Georgia, as proposed, and that, if USBLP were to be authorized to construct the facilities of WPEZ(FM) on Channel 300C1 in Hampton, Georgia, USBLP would probably build a station on that channel in that community.

For the reasons set forth in Paragraphs 2 and 3 of the NPRM in this proceeding, and for the reasons set forth in USBLP's annexed Petition For Rulemaking, USBLP respectfully submits not only that no showing is necessary to demonstrate the independence of Hampton, Georgia,

from Atlanta, Georgia, but also that, in any event, Hampton, Georgia, should be found to be independent of Atlanta, Georgia.

In Paragraph 4 of its NPRM herein, the Allocations Branch of the Mass Media Bureau's Policy and Rules Division held as follows:

“Channel 300C1 can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) southwest of the community to accommodate petitioner's desired transmitter site. [Footnote omitted.] In addition, the proposal must conform with the technical requirements of Section 73.1030(c)(1)-(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Powder Springs, Georgia.”

NPRM, slip op. at 2.

Annexed hereto as Exhibit 2 is the Engineering Statement of Louis R. du Treil, Sr., an engineer in the consulting engineering firm of du Treil, Lundin & Rackley, Inc., who serve as consulting engineers to USBLP. Mr. du Treil therein demonstrates that, in actuality, there is no issue presented as to potential interference to the Commission's monitoring station in Powder Springs, Georgia, since no such interference will occur, but that, in any event, the provisions of Section 73.1030(c)(1)-(5) can be complied with. USBLP hereby respectfully advises the Commission that, in the event that it were required to comply with the technical requirements of Section 73.1030(c)(1)-(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Powder Springs, Georgia, it intends to comply with those rule requirements.

In light of all the foregoing, and in light of the annexed materials, USBLP respectfully submits that adoption by the Commission of the channel reallocation and license modification


proposal set forth in the NPRM herein and proposed herein by USBLP would be fully consistent with the paramount public interest, convenience and necessity. Significantly, based on the totality of the record evidence in this proceeding, it is clear that there would be complete compliance with the Commission's minimum FM channel separation requirements, as set forth in Section 73.207 of the Commission's Rules and other applicable Commission Rules and policies, for the reasons set forth in the annexed materials.

In light of these facts, based on the totality of circumstances here involved, the Mass Media Bureau should expeditiously issue a Memorandum Opinion and Order adopting the reallocation and license modification proposals set forth in the Commission's NPRM and should expeditiously modify the FM Table of Allotments to reallocate FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and the Mass Media Bureau should concomitantly modify the license of Radio Station WPEZ(FM) to specify operations on Channel 300C1 in Hampton, Georgia, in lieu of operation on Channel 300C1 in Macon, Georgia. See, generally, Farmington, Grass Valley, Jackson, Fair Oaks, California, et al., 11 FCC Rcd 8117 (Mass Media Bureau 1996) (granting a channel reallocation request reallocating a local service from the Carson City market to the Sacramento, California Urbanized Area). In this regard, as noted in Paragraph 5 of the Commission's NPRM in this proceeding, the allotment of Channel 300C1 at Hampton, Georgia, is mutually-exclusive with the allotment of Channel 300C1 at Macon, Georgia, since the communities of Hampton and Macon are located approximately 99 km apart, while the Commission's Rules specify a minimum distance separation of 245 km for co-channel Class C1 allotments.

In light of all the foregoing, it is respectfully requested that the Commission's Mass Media Bureau expeditiously amend the FM Table of Allotments as proposed herein by USBLP and by the Commission.

Respectfully submitted,

U. S. BROADCASTING LIMITED PARTNERSHIP

By: 
Irving Gastfreund

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901 15th Street, N.W., Suite 1100
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Its Attorneys

April 13, 1998

Exhibit 1

Copy of Petition for Rulemaking

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

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November 19, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Amendment of
Section 73.202(b) of the Commission's Rules
Table of FM Channel Allotments
Radio Station WPEZ(FM)
Macon, Georgia
U. S. Broadcasting Limited Partnership

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, U. S. Broadcasting Limited Partnership, licensee of Radio Station WPEZ(FM), Macon, Georgia, are an original and four copies of its Petition for Rulemaking proposing reallocation of its channel (FM Channel 300C1) from Macon, Georgia, to Hampton, Georgia, and proposing modification of WPEZ(FM)'s license to specify operations on Channel 300C1 in Hampton, Georgia, following the proposed rulemaking.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER, LLP

By: 

Irving Gastfreund

Enclosures

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20584

In the Matter of)
)
Amendment Of Section 73.202(b) of the) RM No. _____
Commission's Rules) MM Docket No. _____
)
Table of Allotments For FM Broadcast Stations)
(Macon, Georgia, and Hampton, Georgia))

TO: Chief, Mass Media Bureau

PETITION FOR RULEMAKING

Irving Gastfreund

Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, D.C. 20006
(202) 682-3526
Its Attorneys

November 19, 1997

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Summary

Adoption by the Commission of the channel reallocation and license modification proposed herein by U. S. Broadcasting Limited Partnership ("USBLP"), licensee of Radio Station WPEZ(FM), Macon, Georgia, would be fully consistent with the paramount public interest, convenience and necessity. Significantly, based on the totality of the record evidence in this proceeding, it is clear that there would be complete compliance with the Commission's minimum FM channel separation requirements, as set forth in Section 73.207 of the Commission's Rules, and other applicable Commission Rules and policies. Under these facts, based on the totality of circumstances here involved, the Commission should expeditiously initiate a formal rulemaking proceeding contemplating expeditious grant of USBLP's instant proposal and modify the FM Table of Allotments to reallocate FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and the Commission should concomitantly modify the license of Radio Station WPEZ(FM) to specify operation on Channel 300C1 in Hampton, Georgia, in lieu of operation on Channel 300C1 in Macon, Georgia. See, generally, Farmington, Grass Valley, Jackson, Fair Oaks, California, et al., 11 FCC Rcd 8117 (Mass Media Bureau 1996) (granting a channel reallocation request relocating a local service from the Carson City market to the Sacramento, California Urbanized Area).

In light of all the foregoing, it is respectfully requested that the Commission expeditiously institute a rulemaking proceeding proposing amendment to the FM Table of Allotments as set forth hereinabove.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20534

In the Matter of)	
)	
Amendment Of Section 73.202(b) of the)	RM No. _____
Commission's Rules)	MM Docket No. _____
)	
Table of Allotments For FM Broadcast Stations)	
(Macon, Georgia, and Hampton, Georgia))	

TO: Chief, Mass Media Bureau

PETITION FOR RULEMAKING

U.S. BROADCASTING LIMITED PARTNERSHIP ("USBLP"), licensee of Radio Station WPEZ(FM), Macon, Georgia, by its attorneys, pursuant to Sections 1.401 and 1.420 of the Commission's Rules, hereby respectfully petitions the Commission for: (a) modification of the Commission's Table of FM Channel Allotments (Section 73.202(b) of the Commission's Rules) to: (i) delete FM Channel 300C1 from Macon, Georgia; and (ii) add FM Channel 300C1 to Hampton, Georgia; and (b) modification of the license of Radio Station WPEZ(FM) to specify operations on FM Channel 300C1 in Hampton, Georgia, in lieu of operation on Channel 300C1 in Macon, Georgia. USBLP respectfully requests expeditious adoption and release by the Commission of a Notice of Proposed Rulemaking to initiate the process of amendment of Section 73.202(b) of the Commission's Rules to implement the aforementioned proposed changes. In support whereof, it is shown as follows:

I. Introduction

The proposed reallocation of FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and the concomitant modification of the license of Radio Station WPEZ(FM), Macon, Georgia, to Hampton, Georgia, as proposed herein by USBLP, can be effectuated by the Commission in full harmony with Section 73.207 of the Commission's Rules and with all other applicable Commission Rules. The proposal will not conflict with any other existing broadcast station operations and requires no other changes to the FM Table of Allotments. In this regard, there is annexed hereto as Exhibit 1 the Engineering Statement of Louis R. du Treil, Sr., an engineer to the consulting engineering firm of du Treil, Lundin & Rackley, Inc., who serve as consulting engineers to USBLP. Mr. du Treil therein demonstrates that the proposed reallocation of FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, as proposed herein by USBLP, can be accomplished consistent with all existing applicable Commission Rules and policies. Id. at 1.

II. Argument

Mr. du Treil notes in Exhibit 1, infra, that WPEZ(FM) presently operates on Channel 300C1, employing an Effective Radiated Power ("ERP") of 100 kW and an antenna height of 210 meters above average terrain ("HAAT"). Id. at 1. Mr. du Treil further shows that the HAAT employed by WPEZ(FM) is 89 meters below the maximum HAAT permitted to a Class C1 FM station under applicable Commission Rules. Id. Mr. du Treil further shows that although the instant USBLP proposal would remove a local FM transmission service from Macon, Georgia,

nonetheless, abundant service (i.e., at least nine other AM and FM stations) would continue to be provided to Macon, and, in addition, under the instant USBLP proposal, another city -- Hampton, Georgia -- would receive its first and only local FM broadcast transmission service. Id.

Mr. du Treil shows that, in addition to the allotment of four FM channels by the Commission to Macon, all of which are currently in use, there are six AM broadcast stations licensed to Macon, Georgia. Id. at 2. Hampton, Georgia, on the other hand, has no local aural broadcast assignment. Id. at 2.

Hampton, Georgia, is located in Henry County, Georgia, and, according to the 1990 U.S. Census Bureau data, the city had a population of 2,294 persons, and the county had a population of 58,741. Id. Hampton is not located in any Urbanized Area according to the 1990 U.S. Census data. Id. at 2. Mr. du Treil demonstrates that the closest Urbanized Area to Hampton is the southern-most part of the Atlanta Urbanized Area, which is located approximately 8 km to the north of Hampton, Georgia. Exhibit 1, infra, at 2.

Mr. du Treil shows that FM Channel 300C1 can be allotted to Hampton, Georgia, in full compliance with the separation requirements of Section 73.207 of the Commission's Rules, employing a transmitter site located approximately 13 km southwest of the City of Hampton. Id. at 2. The following geographic coordinates were employed as reference coordinates for Mr. du Treil's allocation study:

33° 15' 33" North Latitude

84° 26' 21" West Longitude.

In addition to demonstrating that short-spacings would result from the instant USBLP proposal, Mr. du Treil demonstrates in Exhibit 1 that the proposed allocation of FM Channel 300C1 at Hampton, Georgia, would be mutually-exclusive with the present existing use of FM Channel 300C1 by WPEZ(FM) in Macon, Georgia. Exhibit 1 at 3. Accordingly, the instant rulemaking proposal of USBLP fully complies with the provisions of Section 1.420(i) of the Commission's Rules, which provides as follows:

"In the course of rule making proceeding to amend §73.202(b) or §73.606(b), the Commission may modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."

Mr du Treil demonstrates that the area in which a station broadcasting on FM Channel 300C1 may be located and yet fully meets all Commission separation requirements as set forth in Section 73.207 of the Commission's Rules, is a sizeable area which contains 1,622 square km. Id. The reference geographic coordinates (set forth hereinabove), employed for Mr. du Treil's engineering study of FM Channel 300C1 at Hampton, Georgia, are located in the northern part of the usable zone. Id. at 3.

In addition to complying with all applicable Commission allocation and city coverage rules, the proposed operation of Radio Station WPEZ(FM) in Hampton, Georgia, would cover no more than 17.8 percent of the Atlanta Urbanized Area (and no portion of any other Urbanized Area), as defined by the 1990 Census, with a city grade signal strength of 70 dBu (i.e., 3.16 mV/m) or greater. Id. at 3. This assumes operation with maximum Class C1 Effective Radiated

Power (i.e., 100 kW) and antenna height (299 meters HAAT) and with omnidirectional antenna. Id.

The proposed use of FM Channel 300C1 in Hampton, Georgia, as proposed herein by USBLP, would result in WPEZ(FM) providing greater than city grade 70 dBu (i.e., 3.16 mV/m) coverage to all of Hampton, Georgia. Id. at 3. In addition, the proposed WPEZ(FM) 60 dBu (i.e., 1.0 mV/m) contour will provide a broadcast service to 1,994,701 persons in an area of 16,422 square km. Id. Coverage for the proposed operation of WPEZ(FM) in Hampton, Georgia, is based on the use of maximum Class C1 technical facilities. Id. at 3-4.

Mr. du Treil demonstrates, infra, that the proposed reallocation of Channel 300C1 to Hampton, Georgia, would bring to the City of Hampton, Georgia, its first local aural broadcast transmission facility. Exhibit 1 at 4. Conversely, after reallocation of the Channel of WPEZ(FM) from Macon, Georgia, to Hampton, Georgia, the City of Macon would still enjoy the local broadcast transmission service of each of the following stations: (a) three local Macon FM stations: WMKS(FM) (Channel 222A), WAYS(FM) (Channel 256C1) and WDEN(FM) (Channel 287C1); and (b) six local Macon AM stations: WBML (900 kHz), WMWR (940 kHz), WDDO (1240 kHz), WIBB (1280 kHz), WNEX (1400 kHz) and WDEN (1500 kHz). Id. at 4. Hence, after implementation of the proposed reallocation of WPEZ(FM) to Hampton, Macon would continue to have at least nine local transmission services in that community and would continue to receive 1 mV/m reception service from at least 17 commercial radio stations (including the nine mentioned above). Exhibit 1, infra, at 4.

Mr. du Treil further shows that the currently licensed facility of WPEZ(FM) (i.e., 100 kW ERP, 210 meters HAAT) provides service to 438,179 persons in an area of 13,265 square kilometers, and that five or more aural reception services would remain available within the entire existing 60 dBu (1 mV/m) contour of WPEZ(FM), even following the channel reallocation proposed herein by USBLP. Id. at 4.

Mr. du Treil further demonstrates that the area and population (i.e., 12,307 square km and 403,028 persons) which are theoretically predicted to lose WPEZ(FM) service as the result of the channel reallocation proposed herein, each receive five or more existing reception services of a signal strength of 60 dBu (i.e., 1 mV/m) or greater. Id. at 4-5, infra. A summary of population and area coverage is as follows:

	<u>60 dBu Contour</u>	
	<u>Population (1990)</u>	<u>Area (square km)</u>
Proposed WPEZ(FM)	1,994,701	16,422
Existing WPEZ(FM)	438,179	13,265
Common Coverage	35,151	958
Net Gain	1,959,550	15,464
Net Loss	403,028	12,307

See Exhibit 1, infra at 5.

In short, the proposed net gains from the reallocation proposed herein by USBLP would clearly outweigh by a great margin any net losses in service that would flow from implementation of the proposal. Exhibit 1, infra, at 5. As shown herein, the proposed reallocation of FM Channel 300C1 from Macon to Hampton, Georgia, and the proposed

modification of license of WPEZ(FM) would extend important and new broadcast service to Hampton and bring new service to significant additional areas and populations, all in the paramount public interest.

In sum, Mr. du Treil demonstrates, infra, that the proposed WPEZ(FM) operation at Hampton, Georgia, will provide that community with its first local transmission service without any adverse impact whatsoever on the existing City of Macon, Georgia, or its residents. See Exhibit 1, infra, at 5-6. In short, the paramount public interest, convenience and necessity would best be served by the proposed reallocation of FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and by the proposed modification of the license of WPEZ(FM) to specify operations on FM Channel 300C1 in Hampton, Georgia, all as proposed herein by USBLP.

USBLP intends to apply for a construction permit for implementation of the technical changes proposed herein to seek a modification of the license for WPEZ(FM) to specify operations on FM Channel 300C1 in Hampton, Georgia, upon amendment by the Commission of Section 73.202(b) of the Commission's Rules in the manner proposed herein by USBLP, and, if that application is granted by the Commission, USBLP intends to expeditiously construct the authorized facilities following Commission grant of a construction permit to USBLP.

Under Section 307(b) of the Communications Act, the Commission must always determine whether any proposed amendment to its FM Table of Allotments is in the public interest and whether such a proposed change would "make such distribution of licenses [and]

frequencies ... among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same". In making this statutory determination under Section 307(b) of the Communications Act, the Commission compares the proposed allotment plan to the existing state of allotments for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the proposed plan would result in a preferential arrangement of allotments under Section 307(b) of the Communications Act), the Commission will adopt the proposal and correspondingly reject any counterproposal for a different community. See Community of License, 4 FCC Rcd 4870, 4873 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

In making the determination as to whether there would be a preferential arrangement of allotments, the Commission has long-established FM allocation priorities; that is, priorities which seek to provide the following, in descending order of priority:

1. First full-time aural broadcast reception service;
2. Second full-time aural broadcast reception service;
3. First local broadcast transmission service; and
4. Other public interest factors.

Co-equal weight is given to priorities (2) and (3) above. See Community of License, 4 FCC Rcd 4870 - 4973 and n.8 (1989); Faye and Richard Tuck, Inc., 3 FCC Rcd 5374, 5376 (1988); Parker & Port St. Joe, Florida, 11 FCC Rcd 1095 (Mass Media Bureau 1996).

Here, as shown above, the proposed reallocation of FM Channel 300C1 from Macon to Hampton, Georgia, as proposed herein by USBLP, would clearly constitute a first local broadcast transmission service in Hampton, Georgia, thereby satisfying the above-described FM Allocation Priority No. 3. In addition, as shown above and in Exhibit 1, infra, the proposed channel reallocation would result in a net service gain of 1,959,550 persons (based on 1990 U.S. Census Bureau data) in an area of 15,464 square km (based on the proposed 60 dBu contour of WPEZ(FM)), as compared with a net loss of only 403,028 persons in an area of only 12,307 square km. In short, as shown above and in Exhibit 1 annexed hereto, the proposed reallocation would bring new FM service to significant additional areas and populations. This fact alone constitutes one "other public interest factor", thereby satisfying FM Allocation Priority No. 4, above.

In Community of License, 5 FCC Rcd 7094 (1990), the Commission stated that it would not blindly apply the "first local service" FM Allocation Priority for the "first local service" preference when a station seeks to reallocate an FM channel from a rural community to a suburban community of nearby Urbanized Area (as recognized by the U.S. Census Bureau). Id. at 7096. ¶13. Rather, the Commission indicated that it would continue to apply its existing precedents¹ in this area and delegated to the Commission's staff the application of those precedents to specific factual situations. Community of License, supra, 5 FCC Rcd at 7096. As a result, the Commission's staff has applied these precedents so as to require stations that had sought to

¹ See, e.g., Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Ruck, 3 FCC Rcd 5374 (1988).

reallot their channels and to modify their licenses from rural a community to a suburban communities within an Urbanized Areas (as designated by the U.S. Census Bureau) to make a showing that the suburban community warrants a "first local service" allotment preference. See, e.g., Elizabeth City, North Carolina, 7 FCC Rcd 6815 (1992).

However, by way of contrast, the Commission has not required such a showing to be made in cases, as here, where a station seeks to reallot its channel and to modify its license from a rural community to another community that is located closer to, but outside of, a U.S. Census Bureau- designated Urbanized Area.

The Commission has stated that it would henceforth require the licensee of a station seeking to move from rural communities to suburban communities located outside of a U.S. Census Bureau designated Urbanized Areas (but, nonetheless near such Urbanized Area) to make the same showing that the Commission currently requires of stations under existing precedents which are seeking to move into such Urbanized Areas if, and only if, the station in question would place a city-grade (i.e., 70 dBu) signal over 50 percent or more of the Urbanized Area. Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352, 10354 (Mass Media Bureau 1995).

In this case, however, as shown above and in Mr. du Treil's Engineering Statement (Exhibit 1, infra), the proposed operation of WPEZ(FM) as licensed to Hampton, Georgia, would place a city-grade (i.e., 70 dBu or 3.16 mV/m) or greater signal over no more than 17.8 percent

of the Atlanta, Georgia, Urbanized Area (as designated by the U.S. Census Bureau), and no signal would be placed by the proposed WPEZ(FM) facilities over any part of any other Urbanized Area. See Exhibit 1, infra, at 3. Furthermore, as shown in Exhibit 1, infra, the proposed new community of license -- i.e., Hampton, Georgia -- is not located in the Atlanta Urbanized Area or in any other Urbanized Area; rather, Hampton, Georgia, is located approximately 8 km to the south of the southern-most edge of the Atlanta, Georgia, Urbanized Area. See Exhibit 1, infra at 2 and at Figure 6.

In light of these considerations, under Commission policy, as established in Headland, Alabama and Chattahoochee, Florida, supra, USBLP's instant request to change WPEZ(FM)'s community of license is not subject to the provision by USBLP of additional information responsive to an analysis under Faye and Richard Tuck, supra and other cases, to determine whether the City of Hampton, Georgia, is sufficiently "independent" of Atlanta to merit a "first local service" channel allotment preference. Rather, in light of the facts set forth above, where, as here, such a "first local preference" exists, it should be fully credited to USBLP, in light of all the circumstances here presented.

Nonetheless, if need be, USBLP is prepared to demonstrate in its Comments in the rulemaking proceeding which USBLP is here requesting, that Hampton, Georgia, is not only a specific community for allotment purposes, but also that Hampton is "independent" from Atlanta, Georgia, based on the 8-factor test set forth in Elizabeth City, North Carolina and Chesapeake, Virginia, 9 FCC Rcd 3586 n. 7 (1994).

In this regard, the attention of the Commission is respectfully invited to the fact that Hampton, Georgia, is an incorporated city with a City Charter and is located in Henry County, Georgia, approximately 35 miles south of downtown Atlanta, Georgia. Hampton has a Mayor and a City Council with six Members. The population of Hampton, according to the U.S. Census Bureau, was 2,694 people as of the 1990 U. S. Census. However, according to the City Clerk of Hampton, Georgia (Ms. Elaine Haynes), the current population of Hampton, Georgia, is estimated to be approximately 3,400 persons. In addition, it is estimated that Henry County, Georgia's population increases are and will be as follows:

<u>Year</u>	<u>Population Estimate</u>
1990	59,200
1995	82,700
1996	88,300
2002	115,400
2005	140,300

These estimates are according to the Atlanta Regional Commission and others. According to that Commission, Henry County, Georgia, leads the region in its growth rate, which, since 1990, has averaged 6.9 percent per year.

The City of Hampton provides the following services from its own operating budget and resources to the citizens of Hampton: City police department services, water, sewage, garbage pick-up and electricity services. Electricity services are purchased in bulk from Georgia Power Company and are then resold.

A health care facility is located in Hampton and is known as the Hampton Family Medical Caring Center. Local purchasing facilities in Hampton include a grocery store which is not affiliated with a chain, a pharmacy, a general store, a Hardee's restaurant, a Blimpies restaurant and a pizza fast food outlet. Additionally, many stores are located in the vicinity.

Hampton has a number of local employees, and the largest local employer is the Federal Aviation Administration Center which has over 100 employees. The Hampton City Clerk estimate that approximately 30 percent of the Hampton workforce works within Hampton itself.

It should be noted, in this regard, that the entirety of the region in which Hampton is located is literally booming with growth, and this growth merits awarding a first local service allotment priority to Hampton in this case, in light of Commission policy described above.. Furthermore, as shown in Exhibit 1, infra, adoption by the Commission of the channel reallocation proposed herein by USBLP will not deprive any area of a first or second service. See Community of License, supra, 4 FCC Rcd 4870, 4874 (1989). In addition, it should be noted that the Commission has considered five or more broadcast reception services as being "abundant". Farmington, Grass Valley, Jackson, Fair Oaks, California, et al, 11 FCC Rcd 8117, 8122 n. 1 (Mass Media Bureau 1996).

III. Conclusion

Adoption by the Commission of the channel reallocation and license modification proposed herein by USBLP would therefore be fully consistent with the paramount public

interest, convenience and necessity. Significantly, based on the totality of the record evidence in this proceeding, it is clear that there would be complete compliance with the Commission's minimum FM channel separation requirements, as set forth in Section 73.207 of the Commission's Rules, and other applicable Commission Rules and policies. Under these facts, based on the totality of circumstances here involved, the Commission should expeditiously initiate a formal rulemaking proceeding contemplating expeditious grant of USBLP's instant proposal and modify the FM Table of Allotments to reallocate FM Channel 300C1 from Macon, Georgia, to Hampton, Georgia, and the Commission should concomitantly modify the license of Radio Station WPEZ(FM) to specify operation on Channel 300C1 in Hampton, Georgia, in lieu of operation on Channel 300C1 in Macon, Georgia. See, generally, Farmington, Grass Valley, Jackson, Fair Oaks, California, et al., 11 FCC Rcd 8117 (Mass Media Bureau 1996) (granting a channel reallocation request relocating a local service from the Carson City market to the Sacramento, California Urbanized Area).

In light of all the foregoing, it is respectfully requested that the Commission expeditiously institute a rulemaking proceeding proposing amendment to the FM Table of